

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 98-3751

Henry L. Hill,

Plaintiff - Appellant,

v.

Tele-Communications, Incorporated,

Defendant - Appellee.

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Appeal from the United States
District Court for the
Western District of Missouri.

UNPUBLISHED

Submitted: May 10, 1999

Filed: July 21, 1999

Before LOKEN and MORRIS SHEPPARD ARNOLD, Circuit Judges, and WATERS,*
District Judge.

PER CURIAM.

Henry L. Hill commenced this action asserting federal claims against his former employer, Tele-Communications, Inc. (TCI), for unlawful race and disability discrimination and retaliation, as well as various state law causes of action. TCI moved to dismiss, presenting evidence Hill was employed by TCI's separate subsidiary, TCI

*The HONORABLE H. FRANKLIN WATERS, United States District Judge for the Western District of Arkansas, sitting by designation.

of Overland Park. The district court¹ granted the parties forty-five days for discovery related to this issue. At the end of that period, TCI renewed its motion to dismiss. When Hill failed to respond, the court ordered him to show cause within twelve days why the action should not be dismissed. When Hill failed to respond to that order, the court denied his belated motion for more time to respond and ordered that his complaint be dismissed without prejudice. Hill appeals. After careful review of the record, we conclude the district court did not abuse its discretion in dismissing Hill's complaint because of his repeated failure to address the threshold issue of whether Hill was in fact employed by a TCI subsidiary and, if so, whether TCI is liable for its subsidiary's alleged misconduct. See Edgington v. Missouri Dept. of Corrections, 52 F.3d 777, 779 (8th Cir. 1995) (standard of review).

The judgment of the district court is modified to reflect that the complaint is dismissed without prejudice. As so modified, the judgment is affirmed. Appellant's motion to supplement the record and appendix on appeal is denied.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The HONORABLE FERNANDO J. GAITAN, JR., United States District Judge for the Western District of Missouri.